

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

3 WILHELM LINDER, a/k/a WILLI
4 LINDER, et al.,

5 Plaintiffs,

6 CIVIL NO. 02-2735 (RLA)

7 v.

8 LIGGETT MYERS, R.J. REYNOLDS
9 CORPORATION, et al.,

10 Defendants.

11 **ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

12 The Court has before it defendant R.J. REYNOLDS TOBACCO
13 COMPANY's Motion for Judgment (docket No. 159) and plaintiffs'
14 opposition (docket No. 160). Further, through separate Order, on
15 September 30, 2005, the Court: a) disallowed plaintiffs' experts for
16 noncompliance with Rule 26 Fed. R. Civ. P; b) deemed admitted
17 defendant R.J. REYNOLDS TOBACCO COMPANY's Statement of Undisputed
18 Facts due to plaintiffs' failure to comply with Rule 26 Fed. R. Civ.
19 P.; and c) struck the affidavit of plaintiff VIRGINIA VARGAS for
20 contradicting her own previous sworn testimony.

21 After careful consideration of the arguments set forth in the
22 aforementioned motions, and in view of the above exclusions as well
23 as the requirements of Fed. R. Civ. P. Rule 56(e) and Local Rule
24 56(e), defendant's motions for summary judgment are hereby **GRANTED**.

25 **RULE 56(e)**

26 Federal Rule of Civil Procedure 56(e) was designed to aid courts
in the task of searching the record for genuine issues of material
fact. García Miranda v. Lazoff Bros., Inc., 2004 WL 2238842 (D.P.R.)

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2 (citing García-Sánchez v. Román-Abreu, 270 F. Supp.2d 255, 258
3 (D.P.R. 2003); see also, Tirado v. Johnson & Johnson D.O.C., Inc.,
4 240 F. Supp.2d 144 (D.P.R. 2003) ("The Court is not required to
5 'ferret through the record' looking [sic] for facts....");
6 Stepanischen v. Merchants Despatch Transp. Corp., 722 F.2d at 922,
7 930 (1st Cir. 1983) (courts should not have to probe the record to
8 find material facts); Dominguez v. Eli Lilly & Co., 958 F. Supp. 721,
9 727 (D.P.R. 1997) ("Without specific references to the Record...
10 Courts would have to continue to ferret through the record, read all
11 the answers to the interrogatories, study all the attached documents,
12 and carefully scrutinize all the depositions for lurking genuine
13 issues of material facts."). Local Rules 56(b) - (e) have the same
14 objective.

15 If the non-moving party violates Rule 56, the Court need only
16 examine whether the moving party's facts are sufficient to entitle
17 them to judgment as a matter of law. Tirado, 240 F. Supp.2d at 149.
18 Thus, a plaintiff's failure to comply with Rule 56 may result in an
19 adverse judgment. See Morales v. A.C. Orssleff's EFTF, 246 F.3d 32,
20 33 (1st Cir. 2001); Ruiz Rivera v. Riley, 209 F.3d 24, 28 (1st Cir.
21 2000); Ayala-Gerena v. Bristol Myers-Squibb Co., 95 F.3d 86, 95 (1st
22 Cir. 1996); Stepanischen, 722 F.2d at 930; Tirado, 240 F. Supp.2d at
23 149; Dominguez, 958 F. Supp. at 728-30.

24 In Morales, the First Circuit Court of Appeals affirmed summary
25 judgment against plaintiff for, among other things, non-compliance
26 with Rule 56. Defendant had submitted to the District Court a

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2 statement "meticulously enumerating some three dozen uncontested
3 facts." 246 F.3d at 33-34. Plaintiff responded by filing a statement
4 of contested facts and his own statement of uncontested facts, both
5 of which were deficient. Two-thirds of plaintiff's facts were:
6 (1) completely unsupported by record citations; or (2) references to
7 entire depositions without specific page citations. Consequently,
8 the court granted summary judgment, stating, "Forgiving plaintiff's
9 noncompliance with the local rule would undercut our efforts over the
10 years to enlist counsel as aides to the court." Id. at 35.

11 In Domínguez, the District Court of Puerto Rico also granted
12 summary judgment due to plaintiffs' failure to follow Rule 56.
13 Plaintiffs filed a twenty-five page list of contested facts "filled
14 with speculation, generalities, conclusory assertions, improbable
15 inferences, and ...a lot of 'hot air.'" 958 F. Supp. at 728. The
16 court noted, "plaintiffs fail[ed] in every sense of the word to
17 substantiate their contested facts with proper and specific
18 references to the Record." Id. Some of plaintiffs' deficiencies
19 included facts referring: (1) to exhibits without specific page
20 citations; (2) to exhibits that did not support the alleged
21 contentions; (3) to defendants' intentions and actions without
22 evidentiary support; (4) to irrelevant issues. Id. at 728-29.
23 Therefore, the court in Domínguez deemed admitted defendants'
24 corresponding uncontested facts.

25 In this case, as in Morales and Domínguez, plaintiffs' statement
26 of uncontested facts violated the procedural requirements of Rule 56.

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3 Of plaintiffs' two hundred and twenty-nine responses (229), only four
4 (4) cite specifically to pages or paragraphs in the record. See Pl.
5 Resp. to Defs.' Statement of Undisputed Facts at n. 4, 6-7, 195.
6 Plaintiffs objected to REYNOLDS' undisputed facts ninety-three (93)
7 times; each time merely citing to exhibits generally; more often,
8 failing to offer a cite at all. See id. at n. 22-50, 68-70, 108-46,
9 158-72, 175-76, 181, 195, 207-09, 216-18, 220-21, 224-26. Plaintiffs
10 respond to another fifty-eight (58) facts with "not material" or
11 "irrelevant." See id. at n. 51-63, 80-106, 183-94, 196-97, 199, 203-
12 04, 206. Even plaintiffs' denials fail to cite specifically to the
13 record. See id. at n. 107, 147-49, 152, 178-80, 182, 198, 200-02,
14 219, 227-29. Inasmuch as they do not admit, deny, or qualify
15 REYNOLDS' facts, and they are not supported by proper record
16 citation, these responses violate Rule 56. Notably, over ninety-
17 eight percent (98%) of plaintiffs' answers fail to comply with the
Local Rule.

18 Plaintiff VARGAS also violated Rule 56 when she failed to attach
19 exhibits to her statement of contested facts and belatedly attempted
20 to submit them electronically three days after filing her motions.
21 The exhibits were physically filed nine (9) days after her
opposition.

22 Most notably, plaintiffs violated the substantive purpose behind
23 Rule 56, inasmuch as they did not assist the Court in identifying
24 genuine issues of material facts because the exhibits are largely
25 inadequate to support her facts. Many answers were premised on

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2 improper sources. See Pl. Resp. to Defs.' Statement of Undisputed
3 Facts at n. 108-09, 148, 152-54, 178-80, 182, 195, 198-202, 219, 222-
4 23, 227-29 (citing web-sites and journal articles without context).
5 Others were supported by an affidavit from MS. VARGAS directly
6 contradicting her prior deposition testimony. See id. at n. 70-79;
7 compare 1/04/05 V. Vargas Aff. at ¶ 1, with 5/24/04 V. Vargas Dep. at
8 31, 76-77 (asserting directly contradictory dates as to when she
9 learned of Mr. Linder's cancer). See also, Morales, 246 F.3d at 32
10 (disparities between affidavits filed in opposition to summary
11 judgment and prior deposition testimony do not create genuine issues
12 of fact); Torres v. E.I. DuPont De Nemours & Co., 219 F.3d 13, 20-21
13 (1st Cir. 2000).

14 CONCLUSION

15 For the reasons set forth herein and in the Court's Omnibus
16 Order No. 6 issued on September 30, 2005, defendants' Motions for
17 Summary Judgment (docket Nos. **96** and **110**) and Motion for Judgment
18 (docket No. **159**) are hereby **GRANTED**.

19 Judgment to issue.

20 IT IS SO ORDERED.

21 San Juan, Puerto Rico, this 9th day of November, 2005.

22 _____
23 S/Raymond L. Acosta
RAYMOND L. ACOSTA
24 United States District Judge
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